

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

NANCY J. SMITH,

01-CV-0937E(Sr)

Plaintiff,

-vs-

JO ANNE B. BARNHART,
Commissioner of Social Security,

ORDER

Defendant.

The Honorable H. Kenneth Schroeder, Jr., a Magistrate Judge in this judicial district, having conducted all proceedings necessary to determine the merits of factual and legal issues presented in this matter pursuant to this Court's referral under 28 U.S.C. §636(b)(1)(B), and having on October 31, 2005 filed his Report and Recommendation concerning such, and no objection thereto having been made, and the substance and rationale of said Report and Recommendation having been considered by this Court, it is hereby

ORDERED that said Report and Recommendation is fully confirmed, that the defendant's motion for judgment on the pleadings is denied and that this action is remanded to the Commissioner of Social Security.

DATED: Buffalo, N.Y.
November 30, 2005

/s/ John T. Elfvin
JOHN T. ELFVIN
S.U.S.D.J.